

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

IRONDALE INDUSTRIAL
CONTRACTORS, INC.,

Plaintiff,

v.

VIRGINIA SURETY COMPANY, INC.,
et al.,

Defendants.

) CASE NO. _____
)
)

) JUDGE _____
)
)

) **NOTICE OF REMOVAL OF ACTION**
) **UNDER 28 U.S.C. §1441 (b)**
) **(DIVERSITY)**
)

) **[Accompanying Documents: Civil**
) **Case Cover Sheet; Request for**
) **Judicial Notice; Affidavit of Timothy J.**
) **Puin; and Corporate Disclosure Statement]**

TO THE CLERK OF THE UNITED STATES DISTRICT COURT, NORTHERN
DISTRICT OF OHIO, AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Defendant, National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union"), with the consent of Defendant Virginia Surety Company, Inc., hereby removes the above-entitled action from the Common Pleas Court of Fulton County, Ohio, to the United States District Court, Northern District of Ohio, pursuant to 28 U.S.C. §§ 1332 and 1441 et seq.

As grounds for removal, National Union asserts the following:

I. RELEVANT BACKGROUND

1. On or about December 24, 2009, Plaintiff, Irondale Industrial Contractors, Inc., ("Irondale"), filed a complaint, captioned *Irondale Industrial Contractors, Inc. v. Virginia Surety Company, Inc., et al.*, in the Common Pleas Court of Fulton County Ohio, Case No. 09CV000453 ("Complaint"). (Affidavit of Timothy J. Puin ["Puin Aff."], ¶2; Ex. "A" which, together with the exhibits, represents all pleadings, process, orders, records and all other documents filed in the state action; Request for Judicial Notice ["RJN"], ¶1).

2. The Complaint seeks a declaratory judgment that Defendants are obligated to

provide Plaintiff with a defense and indemnification under their respective insurance policies.

II. CITIZENSHIP

3. Virginia Surety Company, Inc., (“Virginia Surety”) is now and was at the time the Complaint was filed, an Illinois corporation, with its principal place of business in the State of Illinois.

4. National Union is now, and was at the time the Complaint was filed, a Pennsylvania corporation with its principal place of business in the State of New York.

5. Irondale is now, and was at the time the Complaint was filed, an Alabama corporation with its principal place of business in the State of Alabama.

III. REMOVAL JURISDICTION

6. This is a civil action over which the Court has original jurisdiction under 28 U.S.C. § 1332, as it is an action between citizens of different states, and the amount in controversy exceeds the jurisdictional sum of \$75,000.00, exclusive of interest and costs.

IV. AMOUNT IN CONTROVERSY

7. Irondale’s Complaint seeks a declaratory judgment that Defendants must defend and indemnify in connection with an underlying wrongful death suit arising from the death of Miguel Cantu, Sr. (Puin Aff., ¶2, Ex. “A”; Complaint ¶¶ 6-7). Cantu was purportedly “fatally injured when he fell” while working at a construction site. (Complaint, Ex. 3 ¶ 16). The “fatal injuries and damages” were allegedly “a direct and proximate result of” a breach of the “duty to exercise ordinary and reasonable care” by, in part, failing to “provide a safe construction site,” “to employ and enforce a proper site safety plan,” “to provide adequate personal protective equipment,” “to train and/or adequately train” employees, and “to comply with applicable governmental and industry health and safety standards.” (Complaint Ex. 3 ¶ 17). The damages sought in such a suit are likely to exceed \$75,000. *See Roe v. Michelin North America, Inc.*, 637 F. Supp. 2d 995, 999 (M.D. Al. 2009) (commenting that common sense dictates a wrongful death case be valued greater than \$75,000). The Complaint in the state action seeks complete indemnity for the underlying wrongful death action. (Complaint ¶ 10.c.). Accordingly, the amount in controversy exceeds the sum of \$75,000 required for this Court to exercise original jurisdiction under 28 U.S.C. § 1332(a).

V. TIMELINESS OF REMOVAL PETITION

8. The Complaint was filed on December 24, 2009 (Puin Aff., ¶2, Ex. "A"), and National Union was served on December 31, 2009. (Puin Aff. ¶3, Ex. "B"). Because National Union filed this Notice of Removal within thirty (30) days from the earliest date of any service, and within one (1) year from the date of filing of the Complaint, removal is timely under 28 U.S.C. § 1446(b).

VI. VENUE

9. Venue is proper in the United States District Court, Northern District of Ohio, because the Complaint was filed in the Common Pleas Court of Fulton County Ohio. 28 U.S.C. §§ 1441(a), 1446(a).

VII. NOTICE

10. The adverse party received written notice of the filing of this Notice of Removal via regular U.S. mail sent February 1, 2010, and a copy has been filed with the Common Pleas Court of Fulton County Ohio, pursuant to 28 U.S.C. § 1446(d).

Wherefore, National Union prays that this action be removed to the United States District Court, Northern District of Ohio, from the Common Pleas Court of Fulton County Ohio.

By: S:// Timothy J. Puin

Patrick Fredette (*motion for admission pending*)

Timothy J. Puin (0065120)

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VIRGINIA SURETY CO., INC.

By: Douglas Millner

Its: Claim Director

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2010, a copy of the foregoing Notice of Removal, was sent via regular first-class mail to counsel for the Plaintiff, Andrew D. Wachtman, Esq., PEREZ & MORRIS, LLC, 8000 Ravine's Edge Court, Suite 300, Columbus, Ohio 43235; and to co-defendant Virginia Surety Company, Inc., at the address given for it in the caption of the complaint.

Respectfully submitted,

S:// Timothy J. Puin

Patrick Fredette (*motion for admission pending*)

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